

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator) Docket No. ER01-313-010
Corporation)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTION TO INTERVENE AND CONDITIONAL PROTEST OF
THE MODESTO IRRIGATION DISTRICT AND THE CITY OF SANTA CLARA**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2008), the California Independent System Operator Corporation (“CAISO”) submits its Answer to the Requests for Clarification of Modesto Irrigation District and the City of Santa Clara, California (doing business as Silicon Valley Power) (together, “Municipals”), filed November 5, 2008, in this docket.¹ The Municipals seek a Commission order directing the CAISO to provide refunds in this proceeding within 90 days. The CAISO does not believe that it is feasible for the CAISO to process refunds in this proceeding prior to the implementation of the CAISO’s Market Redesign and Technology Upgrade (“MRTU”). The CAISO therefore requests that the Commission not direct refunds (or surcharges) prior to the implementation of MRTU and instead direct that such refunds or surcharges be calculated in accordance with the settlements rerun queue schedule that will be established following MRTU implementation.

¹ Rule 213 permits answers to any pleading other than a protest, an answer, a motion for oral argument, or a request for rehearing. The Commission may by order permit the prohibited answers. Rule 213 does not prohibit answers to Requests for Clarification, but the CAISO recognizes that the Commission may deem the Requests for Clarification to be requests for rehearing. If the Commission does so, the CAISO moves for leave to file an answer. The Commission will waive the prohibition against answers upon a showing that the answer will aid the Commission in understanding the issues in the proceeding and thereby assist the Commission in the decision-making process. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005). The CAISO submits that this Answer will satisfy that standard because it informs the Commission of the feasibility of the relief sought by the Municipals.

I. BACKGROUND

The background of this protracted proceeding has been detailed in a number of Commission Orders, most recently the October 6, 2008, Order on Compliance Filing.² Relevant for the purposes of this filing, the Commission, in Opinion No. 463-A,³ determined that behind-the-meter load served by generators that are not modeled by the CAISO in its regular performance of transmission planning and operation should be exempted from the Control Area Services component of the CAISO's Grid Management Charge ("GMC").⁴

Following rehearing requests, the Commission deferred action on the requests and set for hearing the issue of the appropriate limited exemption for behind-the-meter load.⁵ Following the hearing, in Opinion No. 463-B,⁶ the Commission reaffirmed its determination to exempt load served by unmodeled behind-the-meter generation. The Commission also concluded that there were inaccuracies in the list of unmodeled generators that the CAISO had presented at the hearing. The Commission directed the CAISO make a compliance filing accurately reflecting the total universe of modeled generation for the "locked-in period."⁷ The Commission denied rehearing in Opinion No. 463-C.⁸ Subsequently, a number of parties sought review of the Commission's GMC decisions in the U.S. Court of Appeals.

² *Cal. Ind. Sys. Operator Corp.*, 125 FERC ¶ 61,015 (2008).

³ *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,032 (2004).

⁴ *Id.* at P 20.

⁵ *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶61,162 (2004)

⁶ *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,135 (2005).

⁷ Opinion No. 463-B at P 81. The "locked-in period" covers January 1, 2001 through December 31, 2003. The Commission had approved a revised GMC effective January 1, 2004. *See California Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,406 (2003), *order on reh'g and clarification*, 107 FERC ¶ 61,048 (2004); *California Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,090 (2005) and *California Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,329 (2005) (orders approving uncontested settlements).

⁸ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,224 (2006).

On October 23, 2006, the CAISO submitted a filing in compliance with the Commission's directive. Following protests, the CAISO submitted a revised compliance filing on February 8, 2007.

The Court of Appeals subsequently affirmed the Commission's decisions, including the establishment of the limited exemption for behind-the-meter load based on modeling.⁹ On October 6, 2008, the Commission issued the Order on Compliance Filing, approving the CAISO's revised filing.¹⁰

On November 5, 2008, the Municipals filed their Requests for Clarification. In their pleadings, the Municipals state that, because this proceeding "has continued for many years," they do not "wish for the calculation of refunds, the issuance of same, and the submission of a refund report to the Commission to be deferred to an indeterminate date."¹¹ They ask that the Commission direct the CAISO to provide refunds by 90 days from the date of their filings.¹²

II. ANSWER

The CAISO shares the Municipals desire for an expeditious conclusion of these extended proceedings. However, the deadline proposed by the Municipals is not feasible.

As the Commission is aware, the CAISO is in the final stages of implementing MRTU. Beyond the need to continue day-to-day settlement processes, all resources of the CAISO's settlements department must devote their full attention to ensuring that MRTU is properly implemented, without any market disruptions.

⁹ *Western Area Power Admin. v. FERC*, 525 F.3d 40, 57-58 (D.C. Cir. 2008).

¹⁰ *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,015 (2008).

¹¹ Requests for Clarification at P 2.

¹² *Id.* Modesto Irrigation District requests three months; Silicon Valley Power requests 90 days.

Processing refunds, or surcharges, in this docket, on the other hand, will require significant efforts by the CAISO settlements department. The CAISO must determine the load associated with each unmodeled generator, and then recalculate the Control Area Gross Load of each entity with behind-the-meter load for each settlement period. The CAISO will need to recalculate three years of settlement data. The resources required for such an effort are simply not available during the run-up to MRTU *go live*.

The CAISO recognizes that this proceeding has now extended for eight years, and it has been three years since the Commission determined the proper allocation of the GMC to behind-the-meter load in Opinion 463-B. The delay in finalizing the GMC refunds for the locked-in period, however, does not reflect any lack of diligence by the CAISO. Rather, it has been occasioned by the unsuccessful requests for rehearing and appeals of Opinion 463-B by, *inter alia*, the same parties that now seek a short deadline for refunds. At this point, the need to efficiently implement MRTU must outweigh a few additional months of delay in processing the refunds in this proceeding.

In lieu of establishing a firm date for the completion of the refund (or surcharge) calculations and the submission of a refund report required by this proceeding, the CAISO suggests that this matter be added to its settlements rerun queue. The rerun projects listed in the queue will be addressed after MRTU *go live* as expeditiously as possible. The CAISO will post the schedule of the rerun and the rerun projects that will be in scope for the rerun to the CAISO website.

III. CONCLUSION

Accordingly, the CAISO requests that the Commission not establish a deadline for the provision of refunds in this docket, but rather allow the CAISO to add the 2001-

2003 GMC refund matter to be added to the settlements rerun queue. The schedule of the rerun that would include the 2001-2003 GMC refund matter will be posted on the CAISO website following MRTU *go live*. At this point the CAISO cannot provide a time estimate as to when the refunds (or surcharges) can feasibly be completed, given the resources that are currently dedicated to MRTU *go live*.

Respectfully submitted,

/s/ Michael E. Ward

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 20th day of November, 2008.

/s/ Michael E. Ward

Michael E. Ward